**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION.**

**SECOND APPEAL NO.726 OF 2000.**

Shri Chandrakant Dagadoosheth
Bhilare and another : Appellants.

versus

Kondiram Vithoba Bhilare
(Dead) through his legal heirs
Suchita Gangaram Gudegar & Anr. : Respondents.

Mr.G.S.Godbole for the appellants.
Mr.P.S.Dani for the respondents.

**CORAM : D.G.DESHPANDE,J.**

**DATED : 22nd September 2005.**

**ORAL ORDER**

1. Heard the advocates for the appellants and respondent. The appellant is the original plaintiff who had filed a suit for possession on the basis of partition. According to him the portion of the suit property was given to the respondents. They refused to vacate it. Therefore, he was required to file the suit. In the suit, the original defendant No.1 initially

filed a written statement admitting the claim of the plaintiffs. But the defendant No.2 filed an application for joining her in the suit and contested the suit. Thereafter, the defendant No.1 filed an affidavit, giving explanation of the circumstances to file written statement and, contesting the suit of the plaintiffs. The trial court dismissed the suit. The appellate Court up held the findings of the trial court. Hence this second appeal filed by the plaintiffs.

2. Mr.Godbole, appearing for the appellants, tried to contend that a document was produced and proved on record. It was a document executed and signed by the defendant No.1 and addressed to the City Survey Officer, Taluka Mahad. This document, according to Mr.Godbole, supports the case of the plaintiffs about partition in 1962 because the document is of 5.11.1962. Mr.Godbole also contended that pursuant to this document house was divided into two portions and the respective names were mutated. He, therefore, contended that this document clothes the plaintiff with the right of ownership and if at all the plaintifffs' ouster is claimed by the defendant, then burden lies upon the defendants

and they cannot deny the title of the plaintiffs because defence of ouster implied them admitting the ownership of the plaintiffs over the property. He also contended that if the defendant No.1 has initially filed the written statement admitting the claim of the plaintiffs, whether he could be permitted to file another written statement resiling from her earlier stand to oppose the claim of the plaintiffs. These two aspect, according to Mr.Godbole were not at all considered by both the courts below. According to him, these are the substantial questions involved in this appeal and therefore appeal requires to be admitted.

3. On the other hand the learned counsel Mr.Dani, appearing for the respondents, pointed out from the evidence of the plaintiffs that the plaintiff has admitted in his cross examination that he has filed the suit on the basis of written partition of 1962. Mr.Dani appearing for the respondents contended that this so called written partition is not at all placed on record in any form whatever and the application to the city survey officer allegedly signed by the defendant No.1 cannot clothe the plaintiff with

the right of ownership over the property because the entries in the revenue record do not create any right. They are only the records whatever is submitted by the parties to them.

4. Mr.Dani contended that both the courts have considered that even if from 1962 the property is allegedly divided and stood in the name of the plaintiff so far as his portion is concerned, the plaintiff has not paid any municipal tax. This according to Mr.Dani, appearing for the respondents, clearly shows that there was no partition and this document was never acted upon. Mr.Dani also pointed out the suit in which the original defendant No.1 conceded to the prayers in the plaint and then he changed his stand. He drew my attention to the judgments of both the courts below wherein all these aspects of the matter have been considered. The case of the plaintiff has been rightly rejected. If the plaintiff is claiming the title in the property, he could come with the document. If in the cross examination he admitted that there was written partition, then it is the only written partition that can give him certain rights. That document is not at all produced on

record. There is no substance in this appeal. The appeal is dismissed.

**[D.G.DESHPANDE,J]**